Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10.

Defendants.

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC.

Counterclaimant,

vs.

MM DEVELOPMENT COMPANY, INC., A Nevada corporation, LIVFREE WELLNESS, LLC, d/b/a The Dispensary, a Nevada Limited liability company

Counter-Defendants

Case No.: A-18-785818-W
Dept. No.: IX

PLAINTIFFS'/COUNTER-DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION OR FOR WRIT OF MANDAMUS

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/ Planet 13 ("MM") and LivFree Wellness, LLC d/b/a The Dispensary ("LivFree") ("Plaintiffs"), by and through their counsel of record, and hereby move the Court to enter an injunction or issue a writ of mandamus directing the State of Nevada Department of Taxation ("DOT") to stop processing the conditional marijuana licenses issued in December 2018 and requiring the Nevada Tax Commission to consider appeals from the denial of licenses to MM and LivFree.

I. STATEMENT OF FACTS

A. Arbitrary And Capricious Irregularities In The Grading Process

1. Statutory and Regulatory Background

Nevada voters first passed a medical marijuana initiative allowing physicians to recommend cannabis for an inclusive set of qualifying conditions and created a limited non-commercial medical marijuana patient/caregiver system. Senate Bill 374, which was enacted in 2013, expanded this program and established a for-profit regulated medical marijuana industry. Adult-use legalization passed through the ballot box in November 2016.

In 2014, Nevada accepted medical marijuana business applications and a few months later approved 182 cultivation licenses, 118 licenses for the production of edibles and infused products, 17 independent testing laboratories and 55 medical marijuana dispensary licenses. The number of dispensary licenses was then increased to 66 by legislative action in 2015.

The Nevada State Legislature then passed a number of bills during the 2017 legislative session that affected the licensing, regulation and operation of recreational marijuana establishments in Nevada. One of those bills, Assembly Bill 422, transferred responsibility for the registration, licensing and regulation of marijuana establishments from the State of Nevada's Division of Health and Human Services ("DHHS") to the DOT.[1]

[1] The DHHS licensed medical marijuana establishments until July 1, 2017 when the state's medical marijuana program merged with adult-use marijuana enforcement under the DOT.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

2. The 2018 Retail Marijuana Application Process

On August 16, 2018, the DOT announced a competitive application process for retail marijuana store licenses. That application window opened on September 7, 2018 and closed September 20, 2018. Applicants were required to pay a non-refundable $5,000 application fee for each application.[2] The licenses awarded in that round were announced on December 5, 2018, and remain conditional until the applicant passes all local jurisdictional requirements and passes a final state inspection. The applicants were notified that conditional license holders would have 12 months to become operational, with the understanding that failure to obtain full licensure could result in termination of the conditional license by the DOT.

If the DOT received more than one application for a license for a recreational marijuana dispensary and the DOT determined that more than one application was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the DOT was required to grade and rank the applications within each applicable locality in order from first to last. Applications were supposed to be scored (250 points being the highest possible score) on a group of criteria based on compliance with the provisions of R092-17 Sec. 80 (later enacted as NAC 453D) and NRS 453D relating to:

- **Operating experience** at another kind of business by the owners, officers or board members which is applicable to the operation of a marijuana establishment (**60 points**)
- **Diversity** of the owners, officers or board members
- Evidence of the amount of **Nevada taxes paid "by the applicant"** and other beneficial financial contributions (**25 points**)
- A financial plan, which includes **financial statements** showing the resources of the applicant; including $250,000 liquid (**40 points**)
- The applicant's **plan for care, quality and safekeeping** of marijuana from seed to sale (**40 points**)

---

[2] DOT employee Steve Gilbert said that the DOT received 462 applications for retail marijuana licenses. **Ex. 1;** Gilbert Affidavit. For 462 applications, the DOT got **$2,310,000** in non-refundable application fees.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

- The applicant's **staffing plan** and how it was going to manage the proposed marijuana establishment on a daily basis, including a detailed budget for the first year, an operations manual that demonstrated compliance with Department regulations and a plan for educating the staff (**30 points**)
- The **operating procedure plan** for the marijuana establishment and the inventory control system (**20 points**)
- Likely **community impact**, including educational achievements of the owners, officers or board members (**15 points**)
- Detailed building and construction plans (**20 points**)[3]

There was also an express anti-monopoly provision that prevented the same applicant from winning more than one license in one jurisdiction (e.g., Clark County). According to the Application form released by the DOT, highlighted in all red and all capital letters, "**No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.**" **Ex. 2**, p. 7 (Bold in original).

1. The Prior (2014) Application Process

Prior to the 2018 application process with the DOT, Plaintiffs were previously scored and ranked in the 2014 licensing in conjunction with medical marijuana establishment permit applications. In 2014, **MM received a score of 203.58 and was ranked as the fourth-highest applicant** for a medical marijuana dispensary in unincorporated Clark County while **LivFree was ranked as the highest applicant for Henderson with a score of 208.3; the highest applicant for Reno with a score of 207; and the fifth-highest applicant in unincorporated Clark County with a score of 201.64**.

The factors used for the 2014 rankings were substantially similar to the factors to be used by the DOT for the 2018 rankings for the allocated licenses. The only major difference between the factors assessed for the 2014 rankings and the 2018 rankings was the addition of diversity of race, ethnicity or gender of applicants (owners, officers, board members) to the

---

[3] **Ex. 2**; DOT Recreational Marijuana Establishment Application 7-2-18 (the "Application"), pgs. 17-18.

existing merit criteria. MM, for one, figured to have its scores greatly increased by the addition of the diversity consideration as its board members included African-American women, a Hispanic and a disabled veteran. GBS Nevada Partners (dba Showgrow) was 3% owned by African-Americans and had high hopes. NWC, which is **100% owned by African-Americans**, should have enormously benefitted from the addition of diversity as a factor. That, however, was not the result.

2. The 2018 Results

On or about December 5, 2018, despite their prior exceptional ranking, MM and LivFree were informed that all 12 of their applications (6 each) to operate recreational marijuana retail stores were denied. The DOT improperly granted "conditional" licenses to applicants that were ranked substantially lower than Plaintiffs on the 2014 rankings. Based on public information and the Gilbert Affidavit, it appears that the DOT also improperly granted more than one recreational marijuana store license per jurisdiction to certain applicants. For example, according to a December 11, 2018 press release from Essence Cannabis Dispensary: "Essence applied for and was awarded eight licenses total, giving the Company retail expansion across the State, including: Sparks, Carson City, Reno, **Clark County (qty. 2)**, City of Las Vegas, North Las Vegas, and the City of Henderson." **Ex. 3**; Essence Press Release.[4]

The entire industry was shocked because of the gross disparity between the 2014 rankings and the 2018 rankings, and because no one anticipated that any single applicant would get more than 2 or 3 licenses – much less the 11 that Verano got throughout Nevada (5 just in Clark County). To quote the Las Vegas Medical Marijuana Association, "distribution should have been more disbursed."[5] Instead, just 4 groups somehow usurped 32 licenses:

---

[4] The Gilbert Affidavit tries to make a distinction between "Essence Henderson LLC" and "Essence Tropicana LLC" but those entities have the same owners. **Ex. 1**, ¶¶ 16, 18.

[5] Essence confirmed it was awarded 8 licenses. **Ex. 3**. The Review Journal also reported on December 11, 2018 that Tap Roots got 7 licenses and Green Growth 7 licenses. December 11, 2018 Las Vegas Review-Journal, Section B, p. 6B.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

Trade Name	Corporate Name	Licenses
Lone Mountain Partners/ Zen Leaf	Verano Holding	11
Essence	Integral Associates, LLC	8
Nevada Organic Remedies/ The Source	Green Growth Brands	7
Greenroots	Tap Root Holdings	6
		Total: 32

In stark contrast, in 2014, the most successful applicant group won only 4 licenses.

B. The DOT Failed To Consider Diversity In Grading And Scoring The Applications

1. Nevada Assembly Bill 422 Requires the DOT Consider "Diversity of Race, Ethnicity, or Gender of Applicants to the Existing Merit Criteria"

The Nevada State Legislature passed a number of bills during the 2017 session which affect the licensing, regulation and operation of marijuana establishments. Assembly Bill 422 required that the DOT **shall** consider "[t]he diversity on the basis of race, ethnicity or gender of the applicant or the persons who are proposed to be owners, officers or board members" of the proposed marijuana establishment.[6] A.B. 422, 79th Leg. (Nev. 2017). The DOT applied this mandate from the legislature to the retail marijuana application evaluation criteria by adopting its own set of regulations.

2. The DOT Adopts R092-17, Which Includes Diversity as Part of the Grading of Retail Marijuana License Applications

Applications were supposed to be scored based on a group of application criteria based on compliance with the provisions of R092-17 Sec. 80, NAC 453D.272, NRS 453D and on the content of the applications relating to, among other criteria, "**[t]he diversity of the owners, officers or board members of the proposed marijuana establishment**." R092-17 Sec.

---

[6] The DOT's application packet says shall "[i]ndicates a mandatory requirement." **Ex. 2**, P. 7.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

80.1(b) (Bold added); NAC 453D.272(1)(b). Hence, under both state law and the DOT's own regulation, the DOT was explicitly required to consider and rank the applicants, at least in part, based on the diversity of the owners, officers or board members.

3. The DOT Informed All Applicants That Diversity Was to be Considered as Part of the Grading and Scoring

In multiple places within the 2018 retail marijuana license application packet that the DOT distributed and required all applicants to utilize (July 6, 2018 release date), the diversity of owners, ownership groups and board members was supposed to be part of the grading criteria. On page 8 of the Application, the DOT acknowledged that legislative changes relevant to this application included:

> **Assembly Bill 422 (AB422):**
>
> **- Adds diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria for the evaluation of marijuana establishment registration certificates.**

Ex. 2, P. 8 (Bold added). Additionally, on page 11 of the Application, the DOT specified that any applications must include, as part of the Identified Criteria Response:

> 5.2.10.3. The supplemental Owner, Officer and Board Member Information Form should be completed for each individual named in this application. **This attachment must also include the diversity information required by R092-17, Sec. 80.1(b)** (Attachment C).

Ex. 2, P. 11 (Bold added). Finally, on page 18 of the Application – for a third time – the DOT informed all applicants that if it had to score the applications:

> Ranking will be based on compliance with the provisions of R092-17 Sec. 80, Chapter 453D of NRS and on the content of the applications relating to:
>
> …
>
> **6.2.2. Diversity of the owners, officers or board members.**

Ex. 2, P. 18 (Bold added). The DOT clearly understood that it was required to consider diversity of owners, ownership groups and board members as part of grading the retail marijuana license applications.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

4. The DOT Admits That It Did NOT Consider Diversity in Grading the Retail Marijuana License Applications

Despite the clear and mandatory requirement that the DOT utilize diversity in the grading of the retail marijuana license applications, DOT employees have confessed that diversity was not considered:

> 7. I personally attended a meeting with the Nevada Department of Taxation ("Department") staff on January 10, 2019. Damon Hernandez attended the meeting as the Department's representative. The purpose of the meeting was to receive information regarding the Company's Application score and to ascertain the score for each individual category.
>
> . . .
>
> 10. **Damon Hernandez informed me that diversity was not taken into account by the Department for any application that was submitted.**

Ex. 4; Paul Thomas Aff. (Bold added). Ditching diversity was a direct violation of AB 422's requirements, the DOT's own regulation R092-17, NAC 453D.272(1)(a), and what it thrice stated in its own application packet. Assembly Bill 422 added race as a "merit criteria." The Legislature did not authorize the DOT to relegate diversity to less than an afterthought as a tie-breaker. Based on its own employees' admissions, the DOT failed to follow clear legislative direction as well as its own adopted regulations.

C. Applications Were Graded By Six Temporary Contractors From Manpower – Not By The DOT

The DOT was responsible for reviewing the applications and allocating new licenses to jurisdictions. It was required to rank the applications in accordance with applicable regulations and statutes. The highest-ranking applications were to be awarded licenses. The DOT delegated all ranking and scoring responsibilities to six (6) temporary contractors from an outside employment agency – Manpower (the "Manpower Employees"). In marked contrast, the previous 2014 grading was done by the DHHS and utilized 20 to 25 people (primarily professional-level state employees with college degrees).

Until discovered in this litigation, none of the applicants knew who did the 2018 scoring. While fighting a preservation order sought in this case, the DOT made the stunning revelation

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

that Manpower Employees graded the license applications. Essentially, six temporary workers – with sketchy "qualifications" – went to the DOT offices and reviewed the electronic applications. This haphazard procedure was the substitute for DOT employees doing the grading.

The DOT refuses to discuss or provide any information about potential major deficiencies in the process, such as: failure to maintain a control log or hours log for the applications and the review thereof by the Manpower Employees. The DOT absolutely refuses to acknowledge the applicants due process rights and continues to keep secret things like: who worked on each application, was it signed in or checked out when worked on, how long was the review, what were the dates and times of the review, was supplementation of the packets allowed by the DOT to favored applicants after the deadline for the applications.

These licenses are likely worth tens of millions of dollars each. They will generate tens of millions in tax revenue over the next few years. Yet the DOT improperly delegated its duty to grade the applications to a temporary agency. The DOT refused to disclose the names or qualifications of the six graders but Plaintiffs gleaned information on their own that raises even more concern. For example, why did the DOT let a former food inspector with absolutely no marijuana experience whatsoever serve as the "Marijuana" specialist that graded complex seed-to-sale plans, staffing plans and operating procedure plans? Why did the DOT let a former sales-person from Office Max grade the financial plans? See Section II(A)(6), infra. Why didn't the DOT apprise the Manpower graders that one of the winning applicants (i.e., Nevada Organic Remedies, which submitted plans for care, quality and safekeeping that were immaculately prepared by well-paid consultants) actually had a poor compliance history and had just been caught selling marijuana to minors? Instead of answering these and other simple questions, the DOT has refused to provide any meaningful information, including the identity, scores and sub-part scores of winning applicants.

D. Failure To Acknowledge The Anti-Monopoly Legislative Intent

The medical marijuana statute states, "To prevent monopolistic practices, the DOT shall ensure … that it does not issue, to any one person, group of persons or entity, the greater of …

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

more than 10 percent of the medical marijuana establishment registration certificates otherwise allocable in the county." NRS 453A.326(2). The DOT attempted to mirror this language in R092-17A, Sec. 80, but now ignores the oligopoly it is creating by giving a select group of applicants an astounding 86% of the new licenses in Nevada in 2018. See also NAC 453D.272(5) ("To prevent monopolistic practices, the Department will ensure … that it does not issue, to any one person, group of persons or entity, the greater of … more than 10 percent of the medical marijuana establishment registration certificates otherwise allocable in the county."). Adding insult to injury, the DOT favors 11 licenses being pilfered by the suspect Verano group (a multi-billion-dollar Illinois conglomerate) instead of being given to worthy Nevada businesses.

E. The Lack Of Clarity And Transparency

The DOT is a tax agency, with a set of rules and regulations designed to empower its agents to collect taxes in an efficient manner. Because the DOT was responsible for allocation of highly-valued licenses in which the public has great interest, serious concerns were raised during the public comment period that the proposed framework of the contemplated application process did not adequately address transparency nor allow for a fair allocation of licenses. **Ex. 5**; January 15, 2018 Public Comment Letter from For Fairness in the Cannabis Industry, LLC ("FFCI"). Hence, the DOT has been on notice since January 2018 that the proposed regulations did not give sufficient disclosure of the application scoring standards and would result in a process that was contrary to the public interest.

The DOT did nothing to address these potential infirmities. Assigning a tax regulator, acclimated to secrecy, to draft regulations for an award of valuable licenses appears to have conflicted with the public's interest in transparency and fairness. Even members of the Nevada Tax Commission[7] announced serious misgivings about the manner in which the DOT bungled

---

[7] The Nevada Tax Commission is the head of and oversees the DOT. NRS 360.120 (2). As Commissioner Kelesis said, "[The Tax Commission] is the head of the Department, and we are the head of the Division." **Ex. 6**, 65:10-12.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

the application scoring process. **Ex. 6**; Transcript of Jan. 14, 2019 State of Nevada Tax Commission Open Meeting, pp. 61-65. Commissioner George Kelesis criticized "[r]egulations that were applied beyond the scope of the regulation" by the DOT in its grading of the applications. Id., 62:20-21. Commissioner Kelesis also complained about "things that were changed" in the regulations on which the Tax Commission did not rule. Id., 62:21-22. He was specifically disquieted about how the DOT handled and graded announced buyouts by Canadian corporations. Id., 62:23-63:15. He also railed on the indefensible decision to dump the grading on unqualified Manpower Employees, stating:

> I found probably one of the most distressing parts – and I don't know if the Commission is aware of this or not, if you are aware of it. But our graders were hired through Manpower.
>
> Now, I checked the Manpower drop-down box. And I'm telling you guys, nowhere in there does it say: "Hire marijuana graders." It doesn't say it. So why are we even going to Manpower? I know we budgeted so we could have this Department handle these items. So who trained these people in Manpower? Who oversaw these people in Manpower?

Id., 63:16-64:1. Commissioner Kelesis concluded by lamenting, "**I'm troubled across the board with this whole thing.**" Id., 64:6-7 (Bold added). When Commissioner Kelesis finds out that the Manpower accounting contingent was led by a former sales clerk from Office Max and that a retired food safety inspector graded the complex marijuana procedure plans, he will be far more than "troubled."

A multitude of the denied applicants have expressed great consternation regarding how the applications were scored. At the Nevada Tax Commission Meeting on January 14, 2019, some of the denied applicants took the time to extemporize their fears, including that the DOT has repeatedly refused to provide detailed scoring or demonstrate where points were lost for each category to applicants – as required by Section 93 of R097-012. **Ex. 6**, 54:23-56:16. Additional public comments documented the **statistical impossibility** of certain aggregate scores that have been provided to applicants. **Ex. 6**, 56:17-57:6 (in receiving identical scores for differing locations and applications, "this kind of result … speak to data manipulation and nothing else. If I got this kind of data in a medical journal article that I were to review, I would

send it immediately back to investigate fraud."); 58:12-13 ("**scoring from 20 of the 28 [applications] were identical to the second decimal place.**"). The DOT remains mute.

II. ARGUMENT

A. Eight Fundamental Flaws In The 2018 Determination Require A Re-Determination

There were eight fundamental flaws in the 2018 grading process, any one of which requires a scoring re-determination: (1) failure to score diversity; (2) wildly inconsistent grading of financial plans; (3) improper allowance of fraudulent information, trade secrets, "business plans" and operating procedures of others to be expropriated by winning applicants; (4) failure to properly score for educational achievements; (5) failure to require the "physical address" for the proposed dispensary and staggeringly inconsistent grading of physical address-related criteria, such as generic building plans; (6) hiring of inexperienced and unqualified temporary workers to grade applications; (7) documented bias in favor of certain winning applicants; and (8) improper allowance of taxes and financial applications from entities other than the applicant. Any one of these serious mix-ups requires a scoring re-calculation.

1. Diversity Was Not Scored

NRS 453D and NAC 453D both required that applications be scored on diversity. Section 80 of the Approved Regulations requires ranking based on numerous categories, the second being "[t]he diversity of the owners, officers, or board members of the proposed marijuana establishment." The DOT did not give **any** points for diversity. **Ex. 4**; Thomas Aff. This substantially prejudiced applicants with abundant diversity (e.g., MM and NWC – Frank Hawkins' group) and rewarded applicants with absolutely no diversity (e.g., the Verano group that received 11 licenses). Re-determination is required because the DOT blatantly disregarded the express dictate of NRS 453D and Section 80.

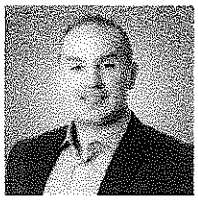
NWC is a good example of an applicant that got short shrift because of the DOT diversity miscue. NWC is **100% owned by African-Americans**. If the legislative dictate to grade on diversity had been followed, NWC should have gotten significantly more points on its 2018 evaluation than on its 2014 evaluation. NWC did not – because the DOT did not give any points whatsoever for diversity. This violated the express language of AB 422 and its

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

legislative history. As Senator Tick Segerblom explained, "this criterion would look at diversifying because currently most of the dispensary owners are **white males** and we are trying to expand this into the community." S. Daily Journal, 79th Leg., at 240 (Nev. 2017).

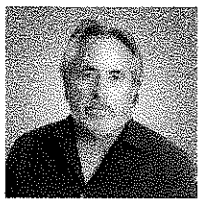
The winning applicants have a stunning lack of diversity. For example, Verano won 11 licenses. Verano is owned by Verano Holdings, LLC, a Chicago-based cannabis operator. But there is no diversity across Verano's management team:



George Archos
Founder/CEO

Sam Dorf
Co-Founder/ Chief Growth Officer

Ron Goodson
President/COO

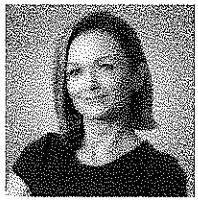


Tim Tennant
Chief Marketing Officer

Anthony Marsico
Exec. VP Retail

Darren Weiss, Esq.
General Counsel

Chris Fotopoulos
Exec. VP Legal Real Estate



Maria Johnson
Dir. National Sales

Cary Millstein
Dir. International Markets

Cathy Lindfors
Dir. Human Resources

It is hard to imagine a less diverse group than that assembled by Verano.

2. The Manpower "Accountants" Gave Wildly Inconsistent Grades to Financial Plans

In 2014, LivFree was ranked as the highest applicant for Henderson with a score of 208.3, the highest applicant for Reno with a score of 207 and the fifth-highest applicant for Clark County with a score of 201.64. While reviewing its 2018 ranking, LivFree discovered that it only got a paltry 12.67 out of 40 potential points for its financial plan (30 potential points for the financial statements and 10 more-or-less automatic points for proof of $250,000 in liquid assets). The grade given to LivFree (12.67) was almost 20 points lower than the **average** grade of 31.5 for all applicants in the jurisdictions where LivFree applied.

The LivFree application that got a 12.67 rating included the financials of **both** Steve Menzies and Don Forman. **Ex. 7**; Dietz Dec., ¶ 11. Menzies and Forman are both centi-

millionaires.[8] Only Don Forman's financials supported another application by Natural Medicine ("NM") that got a full 40 points. Id., ¶ 12. NM's "Owner Financials Summary" was **$124,601,651.72**. Id., ¶ 3. The total net worth on the LivFree "Owner Financials Summary" was **$217,812,655.00**. Id., ¶ 5. Hence, the LivFree net worth was over $93 million greater than the NM net worth. The Manpower "accountants" rated the financial section of NM, which had a listed net worth of $124,601,651.72, at 40 points but radically shaved this rating by 27.33 points when evaluating the far greater net worth of LivFree's owners of $217,812,605.00 (including both NM owner Forman and Menzies). **Ex. 7**; Dietz Dec. Put another way, when you have one centi-millionaire you get 40 points for financial strength, but when you have two you only get 12.67 points. This inexplicable blunder in and of itself prevented LivFree from being a winning applicant because adding another 27.33 points to its grading would have elevated it above the winning applicants in 5 of the 6 jurisdictions where LivFree applied:

Application (by jurisdiction)	**LivFree Score w/ faulty 12.67 points**	**LivFree Score w/ correct 40 points**	**Lowest Winning Score (per jurisdiction)**	**Highest Winning Score (per jurisdiction)**
Reno (RD 292)	190.50	217.83	213.66	227.84
Unincorporated Clark County (RD 293)	190.17	217.50	210.16	227.84
North Las Vegas (RD 294)	190.54	217.87	214.50	227.17
Lyon County (RD 295)	190.17	217.50	196.49	196.49
Las Vegas (RD 296)	190.17	217.50	208.00	227.84
Nye County (RD 297)	190.50	217.83	222.99	222.99

[8] A "centi-millionaire" is someone with a net-worth over $100 million.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

In other words, if Manpower had only provided an "accountant" that understood that $217,812,655.00 is more than $124,601,651.72, LivFree would have won in Reno, Clark County, North Las Vegas, Lyon County and the City of Las Vegas. Now that the DOT has the irrefutable proof submitted herein that LivFree should get 5 licenses if its financial plan had been competently rated, the DOT should tell the Court exactly how it intends to fix this glaring mistake.[9]

This stunning 27.33-point grading discrepancy between the financial plans of the NM and LivFree applications in and of itself proves that the financial sections were the subject of arbitrary and capricious ratings. There is no possible acceptable explanation for grading a financial plan for owners with a $124 million net worth at 40 points, then drastically reducing the grade to 12.67 points when the net worth increases by over $93 million to $217,812,655.00. There is no other logical conclusion than the financial grading by the Manpower "accountants" was arbitrary and capricious.

3. Improper Allowance of Fraudulent Information, Trade Secrets, "Business Plans" and Operating Procedures of Others to Be Attributed to Winning Applicants

The third fundamental flaw was the allowance of fraudulent information and trade secrets of others to be attributed to winning applicants. The business partners of Verano (which won 11 licenses) have explicitly claimed that the Verano applications were riddled with fraud. In a recently-filed lawsuit, Naturex, LLC ("Naturex"), owner and operator of the medical and retail marijuana dispensary "Zen Leaf,"[10] laid bare the fraudulent basis on which the DOT awarded 11 licenses to Verano Holdings, LLC ("Verano") and/or Lone Mountain Partners, LLC ("Lone Mountain"). According to Naturex, Verano controls the business operations of Lone Mountain and, to a certain extent, Naturex. **Ex. 8**; Naturex, LLC, et al. v. Verano Holdings,

---

[9] If the DOT refuses to rectify the arithmetic mistake on the LivFree applications by immediately providing LivFree with 5 conditional licenses, LivFree reserves the right to seek a writ of mandamus compelling it to do so.

[10] See **Ex. 8**, ¶20.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

LLC, et al., Case No. A-19-787873-C, Complaint, ¶ 4. On Verano's website, it represents it owns the Nevada dispensary "Zen Leaf", but the dispensary is actually owned by Naturex. Id.

Verano was supposed to submit license applications on Naturex's behalf but instead engaged in fraud and subterfuge. **Ex. 8**, ¶¶41-45. According to Naturex, **Verano and/or Lone Mountain's license applications claimed the Zen Leaf dispensary that Verano did not own and stole the Naturex "financials, business plans, business designs", etc. Ex. 8**, ¶44. Naturex claims that:

> 47. [Verano/Lone Mountain's] Licenses are premised on the fact they will use the "Zen Leaf" brand for the dispensaries, which is in fact a fictitious firm name belonging to Plaintiff Naturex. On information and belief, **Defendants' misappropriated the fictitious firm name "Zen Leaf" for Defendant Lone Mountain's Application**.
>
> 48. On further information and belief, in furtherance of Defendants' Lone Mountain Application submittal, **Defendants' misappropriated, without permission, Plaintiffs' trade secrets and proprietary information** belonging to Plaintiff Naturex, such as **Plaintiffs' Standard Operating Procedures ("SOPs"), financials, business plans, business designs, business models, and other personal and confidential financial information** belonging to Plaintiff Naturex (the "Naturex Proprietary Information").

Ex. 8, ¶¶47-48 (Bold added). As said above, because the applicant's plan for seed-to-sale care (40 points), operating procedure plan (20 points) and staffing plan (30 points) were potentially worth 90 points out of a possible 250 points (i.e., 36% of the total points), the Naturex allegation that Verano stole its "business plans" and procedures (if true) would require that all 11 of the winning Verano conditional licenses be stricken. Plaintiffs emphasize that Verano's long-time business partner, not Plaintiffs, are leveling these damning charges against Verano.

The scandalous allegations by Naturex demonstrate more flaws and provide a brief glimpse into the opaque application grading process that the DOT seems bound and determined to keep secret. If an applicant can use stolen business plans and claim a dispensary that is not its own to become the largest winner (11 licenses), the Manpower graders were obviously scoring fiction and not reality. The DOT does not care.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

4. Processing Applications Without the "Physical Address" Where the Proposed Dispensary Will Be Located

A license application submitted pursuant to Section 78 of the Approved Regulations "must include," among other things, the following:

> a. The physical address where the proposed marijuana establishment will be located (Section 78(1)(b)(5) of the Approved Regulations);
>
> . . .
>
> c. Proof that the physical address of the prospective marijuana establishment is owned by the applicant or that the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property (NRSD.210(5)(b) . . . .

Many applicants (e.g., LivFree) were diligent in obtaining actual locations and providing the "physical address" and/or proof of property owner permission with their applications. MM went much farther. Because MM was moving its existing dispensary to a new location, it put its actual operational dispensary building in its application as a proposed location. This is what MM stated in 5.3.3 Tab III – Building/Establishment Information:

> Company has included two sets of plans in this non-identified section. **The first set of plans is for a leased 4600 sq. ft. facility, already built as shown, and has been operated as a fully compliant Nevada licensed marijuana dispensary, and has previously passed Nevada Department of Taxation inspection and approvals**.

Ex. 9; Relevant Portion of MM Development's Application (Bold added). In other words, instead of generic plans and specifications for an as yet-to-be-determined location, MM put in an actual built-out dispensary site that had been operating for years.

Directly contradicting its own regulations, the DOT accepted and processed applications from winning bidders that did not have any "physical address" whatsoever. This was effectuated through a "Revised Applications" issued on or about July 30, 2018 (less than 45 days before applications would be accepted). This purported "amendment" completely eliminated requirements a. and c. above. Importantly, neither the Approved Regulations nor NRS Chapter 453D were properly amended to reflect the changes to the Revised Applications

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

and applicants were not given proper notice of the revisions (as license applications were due to be submitted to the DOT less than 45 days after the Revised Application was released).[11]

The DOT's abandonment of the "physical address" requirement precluded graders from realistically evaluating community impact at proposed locations – a key component of the grading. The Application Criteria provided by the DOT states that 15 points will be awarded for the "likely impact of the proposed marijuana establishment in the community in which it is proposed to be located":

A proposal demonstrating: ▪ The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. ▪ The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. *Please note: The content of this response must be in a **non-identified** format.*	15

There was no way to differentiate between competing applications if the grader did not know where in "the community" that the proposed establishment was to be. Gutting this requirement by eliminating the required "physical address" penalized applicants such as LivFree and MM (which did in fact include a physical address for its proposed establishment). Again, where winning applicants were separated from losing applicants by less than 1 point, the 15 points assigned to this category in and of itself would have elevated many "losers" into "winners."

The DOT's eradication of the physical address requirement also raises serious questions as to how graders could meaningfully score up to 20 points for "[b]uilding and construction

---

[11] The DOT determination that no address was required is a violation of Nevada law and the promulgated regulations, as it prevented the DOT from performing the necessary statutory checks of requisite permission to operate in the physical address and to ensure the distance from schools and community centers. For example, NRS 453D.210 provides that the DOT may only issue a license **if** the "physical address where the proposed marijuana establishment will operate" is owned by the applicant or the applicant has landlord approval. NRS 453D.210(5)(b). That statute also requires that any marijuana establishment may not be located within one thousand feet of a school or three hundred feet of a "community facility." NRS 453D.210(5)(c). Additionally, NAC 453D.265(3) requires, as part of any application, "[t]he physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments."

plans with supporting details" because building plans cannot be produced with "details" without a specific location. The application criteria awarded 20 points in this category:

Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: ▪ Building and construction plans with supporting details. *Please note: The content of this response must be in a **non-identified** format.*	20

While the subpart scoring for winning applicants is not yet available, there is convincing evidence that the Manpower graders also acted arbitrarily and capriciously in this area. MM, which submitted an **actual built-out location** instead of non-specific "building and construction plans with supporting details", only got 15.33 points in this category. There is no way that an actual building at a specific address that already operated as a dispensary for years could honestly be graded lower than generic building plans at unknown locations. If MM had gotten the full 20 points that it deserved in this category for its Clark County application (or even 2 more points), it would have been a winning bidder.

Because the Approved Regulations expressly stated that an application "must include" a proposed address, the DOT did not have discretion to cancel this critical requirement. Plaintiffs are informed and believe that substantially all of the winning applications did not have the "physical address" required by law.

5. Failure to Properly Score Educational Achievements (Community Contributions)

The fifth fundamental flaw was the failure to properly score for educational achievements. The Manpower Employees completely and improperly disregarded this category. The applications by a prestigious group of physicians devoted to the scientific study of marijuana were all rejected. Dr. Nick Spirtos explained why the DOT erred in under-scoring the community impact portion of these applications:

> … our group of five physicians has published the absolute only work regarding the successful use of a cannabis product made in Nevada to reduce the chronic opiate injections in patients with chronic pain. We demonstrated a 75 percent reduction in opiate use, presented it at the American Society of Clinical Oncology in June of this last year in Chicago.
>
> And so you understand how bizarre – I'll use the word "bizarre" the scoring was, **we scored less than the average for our impact on this community**. That, in

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

> and of itself, should give you some idea the extent that the application process was not fair, just and unbiased.

Ex. 6, 57:8-20 (Bold added).

Dr. Page Bady also testified at the January 2019 Tax Commission meeting that he – a local physician for 20 years and the former medical director of DaVita Health Care Partners (a publicly-traded $18 billion-dollar company) – received lower-than-average scores for the "impact on the community" portion of the application. **Ex. 6**, 58:24-59:6. Dr. Bady explained:

> **We scored lower than average on impact on the community**. I don't know what's going on in there. I don't want to accuse anyone of anything, but it's difficult to maneuver.
>
> And it had a quality that we used to experience in a publicly-traded company, and I wanted to bring that quality and sophistication into this industry when we have to fight these kind of obstacles.

Ex. 6, 59:3-59:10 (Bold added). It is mind-boggling that the Verano group (sharp Chicago entrepreneurs) got 11 licenses while dedicated Nevada doctors like Dr. Spirtos and Dr. Bady were not recognized for the extensive marijuana-related benefits they have bestowed on this community. These grading results demonstrate that Manpower's scoring of the applications was arbitrary and capricious and in violation of DOT's own regulations as well as Nevada statutes.[12]

6. Applications Were Graded By Six Manpower Employees That Did Not Have Adequate Experience

There were 462 applicants that each paid a $5,000 filing fee; meaning that the DOT collected $2,310,000 to grade applications. Unlike the 2014 applications that were competently graded by dozens of permanent DHHS state employees, the DOT farmed out the **entire** grading function to Manpower – a temporary help agency. Manpower than provided six (6) employees

---

[12] The actual scores did not reflect the operational history of Nevada dispensary operators or the compliance history (or lack thereof) that was known to the DOT at the time the applications were submitted. One applicant that was caught selling marijuana to minors was awarded 7 new licenses. See Section II(A)(7), infra. Both MM and LivFree have outstanding compliance records with the DOT. Only the DOT can shed further light on what actions it took, if any, to adjust the scores of applicants with poor compliance histories.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

to the DOT who actually did the grading of the applications. While this slapdash evaluation process by inadequate staff was doomed to failure at the outset, the outrageous grading that occurred was also the result of the complete and total lack of experience of the persons actually hired by Manpower.

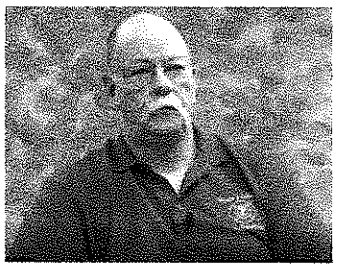
The six Manpower employees are depicted below with their names and the job description provided by the DOT:

Tina Banaszak
(Manpower Employee #1)
"Accountant" I
(former Office Max salesperson)

Donette [Last Name Unknown]
Manpower Employee #2
"Accountant" I

Manpower Employee #3
"Accountant" I

Manpower Employee #4
Personnel Officer I



Duane T. Lemons
(Manpower Employee #5)
Fire & Life Safety Inspector

Richard Elloyan
(Manpower Employee #6)
Marijuana/Health Inspector II
(Country-Western singer)

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

DOT describes Richard Elloyan as a "marijuana" specialist. **Ex. 10**. In actuality, Elloyan is a former restaurant food inspector that retired from the DHHS in 2015.[13] While he is an aspiring country western singer,[14] Mr. Elloyan has never owned or operated a marijuana facility and has no known experience whatsoever with marijuana. Some doubt he ever set foot in a marijuana dispensary or marijuana cultivation facility before being hired in this matter.

It is truly outrageous that DOT would allow Manpower to foist a food safety inspector into the key position of the grading process by calling him a "Marijuana" specialist. The catastrophic result is that there was and could be no adequate grading of the highest potential point totals of the applications. More fully, the plan for seed to sale care and quality and safekeeping (40 points), the staffing plan (30 points) and the operating procedure plan (20 points) were all evaluated solely on review of tendered plan documents -- there were no interviews of applicants or inspection of existing facilities. In other words, if an applicant hired a clever consultant that drafted and submitted pretty procedures that would purportedly be followed, it could get sky high ratings in these categories.

The application prepared by the DOT makes it clear that 90 points (36% of the maximum score of 250) could be gained in these three categories:

Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: ▪ A plan for testing recreational marijuana. ▪ A transportation plan. ▪ Procedures to ensure adequate security measures for building security. ▪ Procedures to ensure adequate security measures for product security. *Please note: The content of this response must be in a* ***non-identified*** *format.*	40

/ / /

/ / /

/ / /

---

[13] Mr. Elloyan's formal title from 2005 to 2009 while working for DHHS was an "Environmental Health Specialist." He inspected restaurants in Northern Nevada for potential health code violations.

[14] If the Court favors country music, it can hear Mr. Elloyan give several performances by entering "Richard Elloyan" and "YouTube" in its internet search engine. The performance from the 2016 Genoa Cowboy Festival is a good example.

Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: ▪ A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. ▪ An operations manual that demonstrates compliance with the regulations of the Department. ▪ An education plan which must include providing educational materials to the staff of the proposed establishment. ▪ A plan to minimize the environmental impact of the proposed establishment.	30

A plan which includes: ▪ A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. ▪ A description of the inventory control system of the proposed marijuana establishment. *Please note: The content of this response must be in a **non-identified** format.*	20

A person that had never worked for the marijuana industry would be completely incompetent to rate these respective plans.

Employing its typical hide the ball tactics, DOT has refused to inform applicants what their **specific** scores were in the 3 above categories and have relegated them to learning only their **combined** score in the 3 categories. Likewise, the DOT refuses to inform applicants of what the grading was for any of the winning applicants in these 3 categories or the combined score of winning applicants in these categories. However, it is glaringly apparent that allowing a food inspector to grade sophisticated marijuana operational plans and procedures created inconsistent grades. For example, the MM and LivFree gradings for these three categories in 2018 appear below:

Applicant	Application Jurisdiction	2018 Score (out of 90)
MM	- All jurisdictions	74.67
LivFree	- Reno	82.50
	- Clark County	82.17
	- Lyon County	82.17
	- City of Las Vegas	82.17
	- Nye County	82.17
	- North Las Vegas	82.20

How two of the best dispensary operators in Nevada could get less than the full 90 points is unfathomable. Giving MM 74.67 when MM operates the largest store in Nevada (i.e., Planet 13, which has about 10% of **all** Nevada sales) is beyond insulting. As the previous high

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

rankings of MM and LivFree in 2014 prove, when someone that knew something about marijuana did the grading in 2014, MM and LivFree got more points than they were given by "marijuana" specialist Elloyan. These three categories and the pertinent criteria were word-for-word identical in 2014 and 2018 – only the grader changed. The DOT charged $2,310,000 to the applicants to grade the applications. Plaintiffs respectfully submit that this was ample money to hire someone who knew something about marijuana operations to grade the respective plans as opposed to a food safety inspector.

The purported "accountants" provided by Manpower are equally distressing. First, as said in Section II(A)(2), these accountants graded one centi-millionaire's financial strength at 40 points but slashed the financial plan grade to a mere 12.67 points when another centi-millionaire was added to the finances. This eye-opening gaffe probably occurred because none of the Manpower "accountants" were actually CPAs.

Manpower Employee #1 has been identified as Tina Banaszak. While listed as an "accountant", Ms. Banaszak was actually a salesperson at Office Max from July 2010 to May 2012. **Ex. 11**. Banaszak is not listed as a Nevada CPA Licensee by the Nevada State Board of Accountancy. Her only accounting experience appears to be as an "Owner/Office Administrator" of a construction firm between September 1997 to November 2008. **Ex. 11**. The fact that the Manpower "accountants" mistakenly rated applicants 27.33 points lower when their net worth was $93 million higher than applicants rated at 40 points alone calls into question the true skill set of these "accountants." **Ex. 7**; Dietz Dec, ¶¶ 11-12.

7. Improper Bias

The seventh fundamental flaw was an improper bias in favor of certain winning applicants. For example, one of the applicants that won 7 of the licenses was caught early in 2018 selling marijuana to minors. **Ex. 12**; 5/2/18 Kara Cronkhite email. When dedicated DOT investigators launched an inquiry, DOT higher-ups ordered them to stop the investigations and white-wash the violations by removing them from the DOT logs:

> Please remove the investigation SODs[15] regarding self-reported **incidents of sales to a minor** for the following: Integral, **Nevada Organic Remedies, Henderson Organic Remedies**.
>
> Per Jorge [Pupo], this should be a letter similar to an APOC. It should state something to the effect of:
>
> We received your incident report.
>
> The corrective actions taken were deemed appropriate (or not).
>
> No further action is necessary at this time (or please take the following actions to remedy the issue.)
>
> **These investigations should be removed from the log.**
>
> Once the new letter is drafted, please send to me [Kara Cronkhite] and Damon [Hernandez] to review.

Ex. 12, (Bold added). This allowed Nevada Organic Remedies to falsely claim in their applications that they had a fantastic "integrated plan … for the care, quality and safekeeping of marijuana from seed-to-sale" (40 points) and an "operational manual that demonstrates compliance with the regulations of the Department" (30 points) when Nevada Organic Remedies was actually being investigated for selling marijuana to minors just months earlier. Similarly, by ordering that the May 2018 "investigations should be removed from the log" (i.e., completely hidden), the DOT concealed the actual negative compliance history of Nevada Organic Remedies from the graders. This allowed Nevada Organic Remedies to get 7 licenses by furnishing graders with pretty plan documents that promised compliance that trumped its actual poor compliance history.[16]

---

[15] "SODs" stands for statements of deficiency. "APOC" stands for a plan of correction.

[16] Rumors are rampant regarding the interactions with the DOT higher-ups and winning bidders, and this will likely be a hot focus of discovery. For now, Plaintiffs only note that the remarkable May 2, 2018 email from Kara Cronkhite ordering a cover-up of sales to minors involved the exact same applicant that was engaged in another questionable incident. In October 2018, while attending the Cannabis World Congress and Business Exposition in Boston, Massachusetts, Kara Cronkhite, Steve Gilbert, and Jorge Pupo reportedly fraternized with Amanda Connor, Esq. Connor is the attorney that was reportedly paid $150,000 per application to prepare the 7 winning Nevada Organic Remedies applications. While it is unknown whether the pending applications by Nevada Organic Remedies were discussed in Boston, there is a definite appearance of impropriety for its attorney to interact with DOT higher-ups at the exact same time that applications were being graded (i.e., the month after their September 20, 2018 submittal and before the awards on December 5, 2018). Raising more

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

8. Improper Allowance and Evaluation of Nevada Taxes Paid and Other Financial Contributions

The eighth fundamental flaw was the improper allowance and evaluation of the amount of taxes paid and other beneficial financial contributions as purportedly belonging to the applicant when they were not. Section 80 of the Approved Regulations provided that the amount of Nevada taxes and other financial contributions "by the applicant" be scored – not taxes by entities purportedly related to "the applicant":

> f. The amount of taxes paid and other beneficial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, **by the applicant** or the owners, officers, or board members of the proposed marijuana establishment . . . .

(Bold added). This clearly limited the Nevada taxes paid to "the applicant" or to individuals that were owners, officers or board members. It did not include Nevada taxes paid by completely different business entities that were purportedly somehow related to the applicant.

The winning applicants engaged in gross manipulation (allowed by DOT) to drastically increase the amount of taxes and other financial contributions that the applicants had purportedly paid. This allowed for a drastic inflation of the grades for newly-formed applicants that had actually paid no Nevada taxes whatsoever. This was primarily done by the artifice of having completely separate entities claim taxes and contributions that were actually paid by other entities.

Essence is a good example of an applicant shifting other entities' taxes to a completely separate and distinct entity. Essence is one of the leading dispensaries in the County and is owned and operated by Integral Associates, LLC, which was formed on April 29, 2014. **Ex. 13**; 4/29/14 Nev.Sec.State filing. Essence created two brand-new LLCs called Essence Henderson, LLC and Essence Tropicana, LLC on December 29, 2017. **Ex. 14**; 12/29/17 Nev.Sec.State filings. Essence issued a press release on December 11, 2018 proclaiming that it won 8 licenses total, including **two in unincorporated Clark County**. **Ex. 3**.

---

alarm, Amanda Connor's dispensary clients received at least 16 conditional licenses in the 2018 application process.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

When complaints were raised with the DOT that giving Essence more than one license in Clark County blatantly violated the "anti-monopoly" provision that precluded the same applicant from having multiple licenses in one jurisdiction, DOT responded with an affidavit arguing that Essence did not in fact violate this provision because Integral Associates, LLC, Essence Henderson, LLC and Essence Tropicana, LLC were "different" entities. **Ex. 1**; 12/13/18 Gilbert Aff.; ¶¶ 15-16; "The information [that Essence won multiple entities in the same jurisdiction], attributed by MM to 'press reports' related to the breakdown of licenses awarded in Clark County, is inaccurate;" and then describing the true winner as Essence Henderson, LLC and Essence Tropicana LLC and not Integral Associates, LLC.

Despite proclaiming that these were separate entities for the anti-monopoly provisions, DOT and the Manpower graders took the tax and financial contributions of Integral Associates, LLC, and used it to highly score the financial plan for the purported completely different entities of Essence Henderson, LLC and Essence Tropicana LLC. Because the two new Essence entities were not even formed until the final days of 2017, they could have paid no Nevada taxes whatsoever and made no Nevada financial contribution whatsoever prior to the date that their applications for licenses were filed in 2018. Given the number of points awarded for tax payments and financial contributions (25 points in this subpart), it would have been impossible for these entities to be winning applicants unless they were awarded points for taxes actually paid by Integral Associates, LLC.[17] Hence, applicants are "separate" applicants to the DOT when the "anti-monopoly" provision is applied but the "same" applicant when taxes paid are shuffled from one completely different legal entity to another. This legerdemain allowed winning applicants that had actually paid no Nevada taxes whatsoever to prevail by falsely usurping the taxes paid by other entities.

---

[17] It would have been "impossible" because MM has been informed it was less than one point away from a winning application in the City of Las Vegas. Hence, if winning applicants merely lost 1 point, MM would have been a winning applicant (just as it was in 2014).

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

B. The Tax Commission Has Jurisdiction To Process The Pending Appeals Of Denials/Grants Of Retail Marijuana Licenses

MM and LivFree timely submitted recreational marijuana retail store license applications and received rejections on or around December 5, 2018. All of Plaintiffs' license applications were denied. Plaintiffs submitted Appeals and Petitions for Redetermination, dated January 3, 2019, which were emailed (to 'nevadaolt@tax.state.nv.us') and sent via Certified Mail and FedEx to the Department of Taxation.

On January 10, 2019, Plaintiffs received correspondence from the DOT, in which the DOT stated: "As there is no allowance for an appeal of the denial of your application for the issuance of a retail marijuana store license, no further action will be taken by the Department on your Notice of Appeal." **Ex. 15**; Jan. 10, 2019 Correspondence. The Deputy Executive Director of the Marijuana Enforcement Division (who is **not** an attorney) made this decision that the Nevada Tax Commission had no ability to hear Plaintiffs' appeals. There was no identifiable input from the Tax Commission. But Tax Commissioner Kelesis is 100% correct that Nevada statutes provide for Plaintiffs' appeals and a hearing before the Nevada Tax Commission.

NRS 360.245(1)(b) provides that any person or entity, "who is aggrieved" by a decision from the DOT "**may appeal** the decision by filing a notice of appeal with the Department within 30 days after service of the decision upon that person or business or legal entity." Moreover, "[t]he Nevada Tax Commission, as head of the Department, **may review all decisions made by the Executive Director** [of the Department] that are not otherwise appealed to the Commission pursuant to this section." NRS 360.245(3). Accordingly, the statutes governing the DOT and the Nevada Tax Commission give the Nevada Tax Commission the authority to hear and consider Plaintiffs' appeals.

Multiple Tax Commissioners have already said that they welcome an appeal; Commissioner Kelesis said:

> And we're going to go from the issuance of the license directly to the court. It's like they're skipping us. Somebody is under the distinct impression that we, as a Commission, do not have jurisdiction over this. I suggest they read 360 real

> close. **We are the head of the Department, and we are the head of the Division, and it comes to us.**

Ex. 6, 65:6-12 (Bold added). Commissioner Kelesis didn't quit with his statements at the January Tax Commission meeting. In March, he said:

> MEMBER KELESIS: I'm not familiar with how they worded their petitions. But in the past if there is a denial and the appeal of the denial is brought to us and we hear that. And there's nothing in the regulations that says that should be stopped for any reason. **So I'm wondering why we haven't seen any of the appeals.**

Ex. 16; 3/4/19 Tax Commission Transcript, 107:5-10 (Bold added). The Nevada Tax Commission believes it should be hearing appeals over the DOT's unpardonable grading. This Court should issue a writ of mandamus directing the DOT to send appeals to the Tax Commission.

III. CONCLUSION

Press reports suggest that marijuana licenses may be worth as much as $30 Million or more per license. While the DOT should have appropriately graded applications regardless of their worth, the sloppy, haphazard and unlawful way in which these valuable property interests were dished out to a few favored applicants is stunning. While Plaintiffs believe that the cult-like secrecy of the DOT is concealing many more serious discrepancies, the eight problem areas discussed herein dictate that an injunction and/or writ of mandamus be issued.

DATED this 6th day of May, 2019.

KEMP, JONES & COULTHARD LLP

Will Kemp, Esq. (NV Bar No. 1205)
Nathanael R. Rulis (NV Bar No. 11259)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiffs/Counter-Defendants

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2019, I served a true and correct copy of the foregoing **Plaintiffs'/Counter-Defendants' Motion for Preliminary Injunction or Writ of Mandamus** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

An employee of Kemp, Jones & Coulthard, LLP

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com